

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR381
)	
OSMIN HERIBERTO ALFARO FUENTES,)	
also known as "Buso")	
)	Judge T.S. Ellis, III
Defendant.)	Hearing Date: 9/1/05

STATEMENT OF FACTS

If this case went to trial, the United States would prove by admissible evidence and beyond a reasonable doubt the following:

1. On or about May 16, 2004, in Fairfax County, Virginia, in the Eastern District of Virginia, for the purpose of gaining entrance to and maintaining and increasing his position in MS-13, an enterprise engaged in racketeering activity, OSMIN HERIBERTO ALFARO-FUENTES, also known as "Buso," the defendant, unlawfully and knowingly aided and abetted the murder of a juvenile male in violation of the laws of the Commonwealth of Virginia, specifically, Va. Code Ann. § 18.2-32, in violation of 18 U.S.C. §§ 2 and 1959(a)(1).

2. From in or about March 2004 through June 21, 2004, OSMIN HERIBERTO ALFARO-FUENTES, also known as "Buso," was a member and associate of a criminal organization, specifically, Mara Salvatrucha, also known as MS-13. MS-13 was a violent gang involved in a variety of criminal activities including auto thefts, threats, aggravated assault, and murder - all in the Eastern District of Virginia and elsewhere. MS-13 constitutes an "enterprise," as defined in 18 U.S.C. § 1959(b)(2).

3. MS-13, through its members and associates, engaged in racketeering activity as defined in 18 U.S.C. §§ 1959(b)(1) and 1961(1), namely, acts involving murder, in violation of laws of the Commonwealth of Virginia, and acts indictable under Sections 1503 (obstruction of justice), 1512 (witness tampering), 1513 (witness retaliation), and 2312 (interstate transportation of stolen vehicles), of Title 18, United States Code. On September 16, 2001, in Daingerfield Island, on the George Washington Memorial Parkway, in Alexandria, Virginia, other MS-13 members, not including the defendant, murdered Joaquin Diaz because they believed that he was a member of a rival gang.

4. At all times relevant to the Second Superseding Indictment, MS-13 members traveled throughout the United States to attend gang meetings, engaged in gang-related crimes, and avoided apprehension by law enforcement. MS-13 gang members periodically wired money collected during clique and general meetings to Los Angeles and El Salvador for gang-related purposes. MS-13 members in Virginia received telephone calls from gang members located in other states to discuss gang business. MS-13 gang members transported stolen and personal vehicles across state lines to participate in gang activities, including meetings, and to escape prosecution for crimes.

5. On or about May 16, 2004, OSMIN ALFARO-FUENTES and a fellow MS-13 gang member, Alirio Reyes, also known as “Seco,” observed a juvenile male and a juvenile female walking in the vicinity of Cavalier Drive and Park Avenue in Herndon, Virginia. ALFARO and Reyes decided to approach the two juveniles to determine whether they were members of a rival gang, or “chavalas.” ALFARO knew that Reyes was armed with a .38 caliber weapon. ALFARO also knew that if the juveniles were rival gang members, Reyes would shoot them.

When ALFARO and Reyes caught up with the two juveniles, ALFARO approached them, intending to harm, even murder, the juveniles. ALFARO questioned the two juveniles to determine whether they were rival gang members. When the juvenile male stated that he was a member of a rival gang known as “18th Street,” Reyes fired several shots at the two juveniles, wounding the juvenile female and killing the juvenile male. ALFARO and Reyes fled Virginia shortly after the shooting to avoid prosecution. Law enforcement officers arrested ALFARO and Reyes in a hotel in Los Angeles on June 18, 2004.

6. ALFARO participated in the murder, in part, due to his membership in and loyalty to MS-13. When he approached the two juveniles, ALFARO knew that the rules of MS-13 required him to attack rival gang members. By participating in the murder, ALFARO was enforcing the rules of MS-13. An MS-13 gang member who participates in the killing of a rival gang member increases his status in the gang.

7. The cause of death of the juvenile male on May 16, 2004 was penetrating gunshot wounds of the thorax/abdomen.

8. The juvenile female suffered a gunshot wound to her back. As a result of her injury, she underwent surgery and was hospitalized for approximately 10 days.

9. On July 2, 2004, ALFARO was interviewed at the Herndon Police Department by Herndon Detective Lee Duranko. After being advised of his rights, ALFARO admitted that he was present the night that Reyes shot the two juveniles. ALFARO admitted that he and Reyes followed the juveniles. He stated that he asked the two juveniles if they were members of the 18th Street gang. He explained that he heard four shots fired when the juvenile male acknowledged being a member of 18th Street.

10. On the night of March 13, 2004, in Herndon, Virginia, ALFARO used a .38 caliber handgun to fire several shots into a vehicle in which approximately five rival gang members were seated. As ALFARO arrived at a party on Bond Street in Herndon, he noticed several members of a rival gang seated in a nearby vehicle. Armed with a .38 caliber handgun, ALFARO approached the passenger side of the vehicle and fired approximately four shots into the vehicle. No one was wounded in this shooting.

11. The same .38 caliber handgun that was used in the May 16, 2004 murder of the juvenile male was also used in the March 13, 2004 shooting on Bond Street in Herndon. Bullets recovered from both incidents were submitted to the laboratory for comparison. After examining the bullets from both shootings, a firearms examiner concluded the bullets were fired from the same weapon.

12. The defendant admits that he participated in the murder described above willfully, deliberately, with premeditation and malice, not by accident, mistake, or otherwise. The defendant further admits that this Statement of Facts does not contain all of the details known to the defendant concerning the murder on May 16, 2004 or the shooting on March 13, 2004, but contains facts necessary to support the accompanying plea agreement.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Morris R. Parker, Jr.
Assistant United States Attorney

Patrick F. Stokes
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, OSMIN HERIBERTO ALFARO-FUENTES and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

OSMIN HERIBERTO ALFARO-FUENTES

We are OSMIN HERIBERTO ALFARO-FUENTES 's attorneys. We have carefully reviewed the above Statement of Facts with him. To our knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Pleasant S. Brodnax, III, Esquire
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Robert Lee Jenkins, Jr., Esquire
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